



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 11-052

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

a. In s. Tax 11.10 (5) (b), is it possible for the relative BTUs of energy produced by gas from anaerobic digestion to be calculated separately from the BTUs of energy produced by other gases? If so, on what authority does the department rely to add the element of exclusive use in this provision?

b. In s. Tax 11.10 (5) (c) 1. and 2., a comparison of direct current to alternating current is made in the ratio of 250 watts of direct current to 200 watts of alternating current. Is this the standard conversion ratio of direct current to alternating current? If not, what is the basis for this conversion ratio?

c. Generally in the rule, the department qualifies products for exemption based on rated capacity. However, s. Tax 11.10 (5) (c) 7. departs from this practice to qualify certain products based on expected daily use. Given the need to apply the exemption at the point of sale, how will this qualification be satisfied? What statutory authority permits the department to qualify a product based on expected use rather than on rated capacity?

d. Section Tax 11.10 (6) (b) specifies that the sale price from the sale of electricity generated by equipment eligible for the exemption under s. Tax 11.10 (1) (a) is exempt from taxation if the sale is to the end user or, if to an intermediary, the end user of the electricity can

be identified. In contrast, s. 77.54 (56), Stats., and s. Tax 11.10 (1) (b), Wis. Adm. Code, state that the sale price of electricity generated by such equipment is exempt from taxation without qualification. It might be argued that the reference to “the storage, use, or other consumption of [the] electricity” indicates the Legislature’s intent to limit the application of the exemption to energy supplied directly to the end user. However, the grammatical structure of the sentence argues against this interpretation. The sentence refers to “the sale of [the electricity] *and* the storage, use, or other consumption [of the electricity]” (emphasis added), clearly treating the sale separately from the storage, use, or other consumption. Where does the department find the statutory authority to limit the application of this exemption as specified in s. Tax 11.10 (6) (b)?

2. Form, Style and Placement in Administrative Code

a. In the analysis, the first paragraph of the description of Iowa law should be written as a complete sentence.

b. In s. Tax 11.10 (3) (intro.) and (4) (intro.), the department may wish to revise the introductory clauses to read, respectively: ““Product”, as defined in sub. (2), includes the following items:” and ““Product”, as defined in sub (2), excludes the following items:”.

c. The effective date of the rule should be specified in a numbered SECTION of the rule. [s. 1.02 (4) (d), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the introductory sentence of the comparison with rules in adjacent states, the comma should be replaced by a semi-colon. This comment also pertains to the last sentence in the example following s. Tax 11.10 (5) (c) 7.

b. In s. Tax 11.10 (6) (a) 2. (Note), the department may wish to revise the note to state that “Section 77.54 (30) (a), Stats., includes an exemption for electricity sold from November through April...”.

c. This rule clarifies most questions likely to arise in the interpretation of s. 77.54 (56), Stats., but overlooks two potentially important questions:

- (1) What does the term “other agricultural waste” include? For example, some definitions of “agriculture” include silviculture and forestry, while others do not. Does “other agricultural waste” include waste from forestry activities? For another example, whey is sometimes perceived as an agricultural waste, but it results from the processing, not the production, of milk. Does “other agricultural waste” include whey?
- (2) What does the term “gas” include? Does it include only fuels in the gaseous state, or does it include liquid fuels produced by anaerobic fermentation? Note that some fuels may be liquid under some conditions and gaseous under others.